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H.812

Introduced by Representatives Satcowitz of Randolph, Berbeco of Winooski,  
Bongartz of Manchester, Bos-Lun of Westminster, Cina of  
Burlington, Clifford of Rutland City, Cole of Hartford, Dodge  
of Essex, Farlice-Rubio of Barnet, Garofano of Essex, Headrick  
of Burlington, Labor of Morgan, LaBounty of Lyndon, Logan  
of Burlington, McGill of Bridport, Morris of Springfield, Ode  
of Burlington, Patt of Worcester, Roberts of Halifax, Sheldon of  
Middlebury, Sibia of Dover, Smith of Derby, Stebbins of  
Burlington, and Torre of Moretown

Referred to Committee on

Date:

Subject: Conservation and development; protection of endangered species;  
sale; taking; critical habitat listing

Statement of purpose of bill as introduced: This bill proposes amendments to  
multiple provisions of State law related to the management of threatened and  
endangered species. The bill would require the Secretary of Natural Resources  
to revise the State list of threatened and endangered species every three years.  
The bill also would require the Secretary of Natural Resources to list critical  
habitat for each threatened or endangered species. In addition, the bill would  
prohibit the sale, offer for sale, transport, or import of a threatened or

1 endangered species within the State. The bill would allow the authorized  
2 taking of a threatened or endangered species only to enhance the propagation  
3 or survival of a threatened or endangered species. The bill also would require  
4 the Secretary of Natural Resources to adopt by rule practices that a person  
5 engaged in farming, forestry operations, or accepted silvicultural practices may  
6 implement to avoid or minimize the taking of a threatened or endangered  
7 species or that encourage critical habitat for threatened or endangered species.

8 An act relating to threatened and endangered species

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 Sec. 1. 10 V.S.A. § 5402(a) is amended to read:

11 (a) The Secretary shall adopt by rule a State endangered species list and a  
12 State threatened species list. The listing for any species may apply to the  
13 whole State or to any part of the State and shall identify the species by its most  
14 recently accepted genus and species names and, if available, the common  
15 name. The Secretary shall revise the list, by rule, at least every three years.

16 Sec. 2. 10 V.S.A. § 5402a is amended to read:

17 § 5402a. CRITICAL HABITAT; LISTING

18 (a) Except as provided for under subsection (f) of this section, the Secretary  
19 ~~may, after the consultation required under subsection 5408(e) of this section,~~  
20 shall adopt or amend by rule a critical habitat designation list for each

1 threatened or endangered species. Critical habitat may be designated in any  
2 part of the State. ~~The Secretary shall not be required to designate critical~~  
3 ~~habitat for every State-listed threatened or endangered species.~~ When the  
4 Secretary designates critical habitat, the Secretary shall identify the species for  
5 which the designation is made, including its most recently accepted genus and  
6 species names and, if available, its common name.

7 (b) The Secretary shall designate only critical habitat that meets the  
8 definition of “critical habitat” under this chapter. In determining ~~whether and~~  
9 where to designate critical habitat for a State-listed threatened or endangered  
10 species, the Secretary shall, after consultation with and consideration of  
11 recommendations of the Secretary of Agriculture, Food and Markets, the  
12 Secretary of Transportation, the Secretary of Commerce and Community  
13 Development, and the Commissioner of Forests, Parks and Recreation,  
14 consider the following:

- 15 (1) the current or historic use of the habitat by the listed species;
- 16 (2) the extent to which the habitat is decisive to the survival and  
17 recovery of the listed species at any stage of its life cycle;
- 18 (3) the space necessary for individual and population growth of the  
19 listed species;
- 20 (4) food, water, air, light, minerals, or other nutritional or physiological  
21 requirements of the listed species;

1 (5) cover or shelter for the listed species;

2 (6) sites for breeding, reproduction, rearing of offspring, germination, or  
3 seed dispersal; migration corridors; and overwintering;

4 (7) the present or threatened destruction, degradation, fragmentation,  
5 modification, or curtailment of the range or habitat of the listed species;

6 (8) the adequacy of existing regulation;

7 (9) actions relating to the listed species carried out or about to be carried  
8 out by any governmental agency or any other person that may affect the listed  
9 species;

10 (10) cumulative impacts; and

11 (11) natural or human-made factors affecting the continued existence of  
12 the listed species.

13 (c) In determining ~~whether~~ where to designate critical habitat for a State-  
14 listed threatened or endangered species, the Secretary shall:

15 (1) use the best scientific, commercial, and other data available;

16 (2) notify and consult with appropriate officials in Canada, appropriate  
17 State and federal agencies, other states having a common interest in the  
18 species, affected landowners, any municipality where ~~the~~ a proposed  
19 designation is located, and any interested persons at least 60 days prior to  
20 commencement of rulemaking;

1           (3) notify the appropriate officials and agencies of Quebec and any state  
2 contiguous to Vermont in which the species affected is known to occur; and

3           (4) if a critical habitat designation is proposed in a growth center, new  
4 town center, or neighborhood development area designated under 24 V.S.A.  
5 chapter 76A, notify the Secretary of Commerce and Community Development  
6 and any municipality in which the designation is proposed.

7           (d) Prior to initiating rulemaking under this section to designate critical  
8 habitat, the Secretary shall notify the owner of record of any land on which  
9 critical habitat is proposed for designation. The Secretary shall make ~~an~~  
10 reasonable efforts to work cooperatively with affected landowners.

11           (e) Where appropriate, the Secretary shall include well-established  
12 mitigation practices and best management practices in the critical habitat  
13 designation rule.

14           (f) The Secretary shall not designate critical habitat in a designated  
15 downtown or village center, designated under 24 V.S.A. chapter 76A.

16 Sec. 3. 10 V.S.A. § 5403(a) is amended to read:

17           (a) Except as authorized under this chapter, a person shall not:

18               (1) take, possess, or transport wildlife or wild plants that are members of  
19 a threatened or endangered species; ~~or~~

20               (2) destroy or adversely impact critical habitat;

1           (3) sell or offer for sale in intrastate commerce a threatened or  
2           endangered species;

3           (4) deliver, receive, carry, transport, or ship a threatened or endangered  
4           species in intrastate commerce; or

5           (5) import a threatened or endangered species into or export a threatened  
6           or endangered species from Vermont.

7           Sec. 4. 10 V.S.A. § 5408 is amended to read:

8           § 5408. AUTHORIZED TAKINGS; INCIDENTAL TAKINGS;

9                               DESTRUCTION OF CRITICAL HABITAT

10           (a) Authorized taking. Notwithstanding any provision of this chapter, after  
11           obtaining the advice of the Endangered Species Committee, the Secretary may  
12           permit, under such terms and conditions as the Secretary may require as  
13           necessary to carry out the purposes of this chapter, the taking of a threatened or  
14           endangered species, the destruction of or adverse impact on critical habitat, or  
15           any act otherwise prohibited by this chapter ~~if done for any of the following~~  
16           purposes: in order

17                               ~~(1) scientific purposes;~~

18                               ~~(2) to enhance the propagation or survival of a threatened or endangered~~  
19           species;

20                               ~~(3) zoological exhibition;~~

21                               ~~(4) educational purposes;~~

1           ~~(5) noncommercial cultural or ceremonial purposes; or~~  
2           ~~(6) special purposes consistent with the purposes of the federal~~  
3           ~~Endangered Species Act.~~

4           (b) Incidental taking. After obtaining the advice of the Endangered Species  
5           Committee, the Secretary may permit, under such terms and conditions as  
6           necessary to carry out the purposes of this chapter, the incidental taking of a  
7           threatened or endangered species or the destruction of or adverse impact on  
8           critical habitat if:

9                 (1) the taking is necessary to conduct an otherwise lawful activity;

10                (2) the taking is attendant or secondary to, and not the purpose of, the  
11           lawful activity;

12                (3) the impact of the permitted incidental take is minimized; and

13                (4) the incidental taking will not impair the conservation or recovery of  
14           any endangered species or threatened species.

15           (c) Transport through State. Nothing in this chapter shall prevent a person  
16           who holds a proper permit from the federal government or any other state from  
17           transporting a member of a threatened or endangered species from a point  
18           outside this State through the State.

19           (d) Possession. Nothing in this chapter shall prevent a person from  
20           possessing in this State wildlife or wild plants that are not determined to be  
21           “endangered” or “threatened” under the federal Endangered Species Act where

1 the possessor is able to produce substantial evidence that the wildlife or wild  
2 plant was first taken or obtained in a place without violating the law of that  
3 place, provided that an importation permit may be required under section 4714  
4 of this title or the rules of the Department of Fish and Wildlife.

5 (e) ~~Interference with agricultural~~ Agricultural or silvicultural practices. ~~No~~  
6 ~~rule adopted under this chapter shall cause undue interference with farming,~~  
7 ~~forestry operations, or accepted silvicultural practices.~~ The Secretary, after  
8 consultation with the Secretary of Agriculture, Food and Markets, shall  
9 develop by rule practices that a person engaged in farming, forestry operations,  
10 or accepted silvicultural practices may implement to avoid or minimize the  
11 taking of a threatened or endangered species and that encourage critical habitat  
12 for threatened or endangered species. This section shall not be construed to  
13 exempt any person from the provisions of the requirements of this chapter,  
14 provided that if a taking of an endangered species occurs during the course of a  
15 farming or forestry operation, a person complying with the practices adopted  
16 by the Secretary under this section shall be afforded a rebuttable presumption  
17 that they did not cause the taking. The Secretary shall not adopt rules that  
18 affect farming, forestry operations, or accepted silvicultural practices without  
19 first consulting the Secretary of Agriculture, Food and Markets and the  
20 Commissioner of Forests, Parks and Recreation.

21 \* \* \*



1 (l) General permits.

2 (1) The Secretary may issue general permits for activities that will not  
3 affect the continued survival or recovery of a threatened or endangered species.

4 \* \* \*

5 (4) The Secretary may issue a general permit to take a threatened or  
6 endangered species or destroy or adversely impact critical habitat only if an  
7 activity or class of activities satisfies one or more of the following criteria:

8 (A) the taking of a threatened or endangered species or the  
9 destruction of or adverse impact on critical habitat is necessary to address an  
10 imminent risk to human health; or

11 (B) a proposed taking of a threatened or endangered species or the  
12 destruction of or adverse impact on critical habitat would enhance the overall  
13 long-term survival of the species; ~~or~~

14 ~~(C) the Secretary has approved best management practices that are~~  
15 ~~designed, when applied, to minimize to the greatest extent possible the taking~~  
16 ~~of a threatened or endangered species or the destruction of or adverse impact~~  
17 ~~on critical habitat.~~

18 \* \* \*

19 Sec. 5. EFFECTIVE DATE

20 This act shall take effect on July 1, 2024.